

Amesbury Municipal Council Minutes
Tuesday, May 12, 2009
7:00 PM Town Hall Auditorium

Call to Order 7:02PM

Pledge of Allegiance – Councilor McMilleon

Roll Call: Joseph McMilleon, Allen Neale, Jonathan Sherwood, Mary Chatigny, Stephen Dunford, Anne Ferguson, Robert Lavoie, Roger Benson
Robert Gilday arrived at 7:25PM

Act on Minutes: Councilor Neale motioned to accept minutes of April 14, 2009 and April 28, 2009 as submitted, Councilor McMilleon second – Voted Unanimous

Licenses and Permits

2009-043 2009 Renewal Junk Dealers License

Deco Reflections, 44 Market St

Ashely & Barnes, Inc., 206 Elm St.

N.A. Nichols, Inc., Railroad Ave.

Yesterday's Charms & Redesign, 87 R Elm St

Councilor Lavoie read the 2009-043 into the record and motioned to approve the licenses as submitted with the usual stipulations, Councilor Neale second. Voted – 8 Yes

2009-044 2009 Renewal – Weekday/Sunday Pool

St. Jean Baptiste Club, 61-67 Main St

Lafayette Club, 11 High St

The Barn, 5 Ring St

Polish National Alliance Inc., 14 ½ Mill St

Szechuan Café, 88 Haverhill Rd.

Councilor Lavoie read 2009-043 into the record and motioned to approve as submitted with the usual stipulations, Councilor Ferguson second. Voted – 8 Yes

2009-045 2009 Weekday/Sunday Bowling

Lafayette Lanes, 11 High St

Leo's Superbowl, 84 Haverhill Rd

Councilor Lavoie read 2009-045 into the record and motioned to approve as submitted with the usual stipulations, Councilor Ferguson second. – Voted – 8 Yes

2009-046 JK Fashions LLC d/b/a Trendsetters Boutique – Junk Dealers License

President Benson read 2009-046 into the record.

Karyn Nicholson stated Trendsetters is going to be a woman's consignment store including juniors clothing and accessories.

Councilor Sherwood motioned to approve 2009-046 as submitted, Councilor Ferguson second. Voted – 8 Yes

2009-047 John McInnis Auctioneers – Auctioneers License

President Benson read 2009-047 into the record.

Councilor Ferguson motioned to accept 2009-047 with the usual stipulations, Councilor Neale second. Voted – 8 Yes

2009-052 National Grid – underground electrical conduits on Middle Road
President Benson read 2009-052 into the record.

Mr. Jason Dwyer represented National Grid. Mr. Dwyer stated National Grid is seeking permission to install a manhole and conduit system along Middle Road, Buttonwood Road and South Pond Hill Road. It is in support of the new substation being built and will provide additional distribution support to the area for load increase predicted in the next 5 to 10 years.

Councilor Ferguson asked what the timing of the project is going to be and how long it is expected to last. Mr. Dwyer stated they would like to begin by late June or early July. They anticipate construction of the conduits and man holes to last 3 to 4 weeks. A few months after completion of the conduits the underground crew will come in a pull the cables into the conduits. It's anticipated to take approximately 2 to 3 weeks.

Councilor Lavoie asked if there will be any pavement cutting while installing the conduits. Mr. Dwyer stated they try to stay in the shoulder of the road but if they have to cut it will be restored within applicable regulations.

There were no abutters wishing to speak.

Councilor Sherwood motioned to approve 2009-052 as submitted, Councilor McMilleon second.
Voted – 8 Yes

Public Comment

James Thivierge, 106 Friend Street – Mr. Thivierge would like an investigation into the annual report. He would like a copy of the free cash letter and all bonds and federal grants put in the clerks office.

Todd McGrath, Board of Health – Mr. McGrath stated the Board of Health is monitoring their budget and inspection work performed by contractors hired by the Board.

Jane Snow – Ms. Snow is still very upset that there is no health department and would like to see the Town Nurse reinstated soon. She would also like to see the Mayor's raise rescinded.

Mario Pinierio, 4 Gardner St. – Mr. Pinierio expects the budget to be at least a million dollars less because of the 18 layoffs. He is not happy with the coverage Amesbury is receiving from the Newburyport Health Nurse.

Mayor Kezer – FY2010 Budget

Mayor Kezer gave an overview of the 2010 budget. The FY2010 Budget Summary is on file in the Clerk's office.

Council Response to Public Comment

Councilor Dunford responded to the elimination of the Health Department and Town Nurse. He feels having a Town Nurse gives a false sense of security. If there is a real pandemic the Town Nurse will not be able to diagnosis the difference between a common cold and the swine flu. Without the necessary tools it can not be done.

Mayoral Appointments

2009-048 Reappointment – Charles Benevento 3 year term Amesbury Retirement Board
Councilor Lavoie read 2009-048 into the record.
Councilor Lavoie motioned to approve 2009-048 as submitted, Councilor Neale second.
Voted – Unanimous

Councilor Ferguson motioned to take 2009-053 out of order, Councilor Sherwood second – Voted Unanimous

First Reading

2009-053 Amesbury Police – complaints filed against Amesbury Auto Sales
President Benson abstained from 2009-053.
Councilor Lavoie read 2009-053 into the record.

Lt. Mark Gagnon – Amesbury Police Dept. – Lt. Gagnon explained that there have been numerous complaints against Amesbury Auto Sales. The issues the police department have been dealing with include selling and delivering vehicles without titles, miss use of dealer plates, selling motor vehicles that can not pass inspection, selling the same vehicle twice and reissuing the purchase contract to avoid the individual not being able to drive the vehicle among other complaints. Today the Amesbury Police along with the Mass State Police inspected 20 vehicles on the lot and found that Mr. Nardone held the title for only one vehicle. They also seized his dealer plates.

Councilor Lavoie asked Lt. Gagnon if it is correct that the harm to the public is so immediate and severe, if this business continues to operate, that the police department is recommending that the Council acting in their capacity as the Class II used car licenses issuer to take immediate action to suspend the license until the Police Department has an opportunity to complete the investigation. Lt. Gagnon replied that is correct.

Councilor Lavoie stated he would like to entertain a motion that in our capacity as the licensing authority that we immediately suspend this license until the Amesbury Police Department has an opportunity to complete their investigation. Councilor Chatigny moved the motion, Councilor Neale second.

Voted – 8 Yes, 1 abstain (Benson)

Councilor Lavoie stated the second motion he would like to entertain is to schedule a hearing at the next municipal council meeting June 9, 2009 for the purpose of allowing Terra Nardone d/b/a Amesbury Auto Sales to show cause why this license should not be revoked on a permanent basis, Councilor Neale moved the motion, Councilor Dunford second.

Voted – 8 Yes, 1 abstain (Benson)

Councilor Lavoie asked Lt. Gagnon to retrieve the license.

Second Readings

2009-035 An Order to accept a \$2,200 donation from the Central Congregational Church – Mayor Kezer sponsor cont.

President Benson read 2009-035 into the record.

Councilor Neale read the recommendation from the Finance Committee to accept.

Councilor Ferguson motioned to approve 2009-035 as submitted, Councilor Chatigny second.

Roll Call Vote – Unanimous

Public Hearings

2009-042 R Street Bridge – Mayor Kezer sponsor

President Benson opened the public hearing.

Robert Desmarais – DPW Director

Mr. Desmarais states the town is obligated to do a right away acquisition for the reconstruction of the R Street bridge. It will involve taking several temporary and permanent easements. Two of the properties involved donated their easement to the town; one easement requires a taking and compensation.

Councilor Neale read the recommendation of the Finance Committee in favor of accepting 2009-042

Part 1 6 – Yes, 1 opposed and 1 recused.

Part 2 6 – Yes, 1 opposed and 1 recused

Councilor McMilleon asked Mr. Desmarais for the dollar amount spent on the preparation of the easements he stated \$1,305 on the survey and legal cost around \$2,500.

Ann Hockmeyer – owner of Hockmeyer Studios

Ms. Hockmeyer stated she does not have a problem with her property being taken for this project but questioned the expense for building and repairing a bridge she does not feel is necessary. She is concerned about Mr. and Mrs. Drew and their business; it will be a great hardship financially for them.

President Benson closed the public hearing.

President Benson recused from 2009-042.

Councilor Lavoie read the recommendation of the Ordinance Committee to pass as proposed, voted unanimously.

Councilor Lavoie read the recommendation of the Planning Board to pass as submitted.

Councilor Lavoie read 2009-042 part 1 into the record:

1. To petition the Municipal Council to vote to:

1. Authorize the Mayor to acquire, from time to time, by gift, purchase or eminent domain, certain permanent easements, for public way purposes, shown as T-1, T-2, T-3, T-4, T-5, T-6 and E-7 as shown on a plan entitled "Easement Plan of Land Amesbury Located in Amesbury Massachusetts (Essex County – South District) Prepared for City of Amesbury," dated February 17, 2006, revised through April 22, 2009, prepared by Richard F. Kaminski and Associates, Inc. (the "Plan"), and certain temporary easements, shown as TE-1, TE-2, TE-3 and TE-4 on the Plan, for the purposes of constructing, installing and repairing the public ways.

2. Raise and appropriate the sum of Twenty Seven Thousand Three Hundred Forty (\$27,340.00) Dollars by borrowing or transfer from available funds to compensate William F. Drew and Beverly A. Drew, owners of property being Assessor's Map 40, Parcel 269, for damages incurred in the taking of two (2) permanent easements and a temporary easement.

3. Order the alteration of the layouts of R Street, Elm Street and Gale Court, each a public way, as shown on the Plan, specifically to include within the layouts as so altered the permanent easements identified on the Plan as T-1, T-2, T-3, T-4, T-5, T-6 and E-7.

4. Authorize the Mayor to execute all documents, including but not limited to, an Order(s) of Taking, and to take all related actions necessary or appropriate to effectuate the foregoing acquisitions of properties and takings.

Councilor Neale motioned to accept 2009-042 Part 1: The R Street Bridge Takings and Alteration of Layouts as submitted, Councilor Chatigny second.

Councilor McMilleon asked Mr. Desmarais to explain how the compensation amount was reached. Mr. Desmarais stated the town began an appraisal process last year when it was determined that an alternative construction method could not be found to avoid impacting the property. It is a typical real estate appraisal that compares Mr. and Mrs. Drew's commercial property to other sales that have taken place in the area. A per square foot cost of the land area was determined and what impact the project would have on the sale of the property if they were to sell it before and after completion. It was governed by Mass state law and business losses can not be compensated under eminent domain taking. Mr. Desmarais explained there is a mechanism in place if Mr. Drew disagrees with the appraisal where he can sue for damages for up to three years. Councilor McMilleon asked if there were other options to repair the bridge that would not result in loss of income for the Drew's. Mr. Desmarais explained the bridge is being designed by a consultant hired by Mass Highway. The town has very little input to the design approach for the bridge. It has taken many years to get to this point. The design has gone thru many iterations and Mass Highway is either unable or unwilling to change the design. If it was the town's contractor they would have control in the design and length of construction. Mr. Desmarais hopes they get a contractor they can work with to expedite the work being done in front of Mr. Drew's property.

Councilor Lavoie explained that the temporary takings are just for the construction. A drilling rig will have to be placed in front of one of his bays while they drive the piles. The construction time that the rig will have to sit there would be approximately 16 weeks. Even though the taking is for three years the construction will only be approximately 16 weeks. He also explained that the bridge went out in 1996 and the Town of Amesbury's master plan and other Economic Development Plans have always called for this bridge to be restored. The funding for the bridge is from federal and state sources and the town's contribution is whatever it costs to secure the right of way. Any additional compensation for the Drew's will be decided by a Judge. Whatever a Judge decides he is truly entitled to the town will have to pay it.

Councilor Dunford stated under the worst case scenario Mr. Drew was not able to use his bay for three years there is a strong probability he would be bankrupt. Even if he gets compensated he probably would not be able to restart his business in three years. He does not feel this is one of the better decisions Amesbury has made.

Councilor Ferguson is disappointed in the amount of compensation being given the Drew's.

Councilor Sherwood notes that the difficulty with the valuation question is mass state law. If the town were to consider the business loss it would bring it own liabilities to compensate more than what is allowed under state law. He believes the repair of the bridge is a valuable improvement for the traffic flow for downtown.

Councilor Neale motioned to accept 2009-042 Part 1: The R Street Bridge Takings and Alteration of Layouts as submitted, Councilor Chatigny second.

Roll Call Vote – 7 Yes, 1 No (Dunford), 1 recuse (Benson)

Councilor Lavoie read into the record 2009-042 Part 2:

2. To petition the Municipal Council to vote to:

To petition the Municipal Council to vote to:

1. Authorize the Mayor to refer the alteration of the layouts of R Street, Elm Street and Gale Court, each a public way, to the Planning Board, said alteration of layouts to include permanent easements T-1, T-2, T-3, T-4, T-5, T-6 and E-7 as shown on a plan entitled "Easement Plan of Land Located in Amesbury, Massachusetts (Essex County – South District) Prepared for City of Amesbury," dated February 17, 2006, revised through April 22, 2009, prepared by Richard F. Kaminski and Associates, Inc. (the "Plan").

2. Authorize the Mayor to file the Plan with the City Clerk.

Councilor Neale motioned to accept 2009-042 Part 2: The Alteration of Layouts of R Street, Elm Street and Gale Court as submitted, Councilor McMilleon second.

Roll Call Vote – 7 Yes, 1 Abstain (Dunford), 1 Recused (Benson)

First Readings

2009-001 FY2010 Budget – Mayor Kezer sponsor

Councilor Sherwood motioned to refer 2009-001 to the Finance Committee for budget hearings and to schedule the public hearing on June 16, 2009, Councilor McMilleon second.

Voted – Unanimous

2009-049 Transfer \$374,456.08 from Reserve for AHS Project to AHS Project – Mayor Kezer sponsor

Councilor Neale motioned to refer 2009-049 to the Finance Committee for a public hearing, Councilor Sherwood second – Voted – Unanimous

2009-050 An Order to authorize the Mayor to accept grants/gifts up to \$5,000.00 – Mayor Kezer sponsor

Councilor Lavoie motioned to refer 2009-050 to Finance Committee for a public hearing and to the Ordinance Committee for their review and recommendation, Councilor Neale second.

Voted – Unanimous

2009-051 Accept Fairway Drive by the public as a public way – Mayor Kezer sponsor

Councilor Lavoie motioned to refer 2009-051 to the Ordinance Committee and the Planning Board, Councilor McMilleon second.

Voted – Unanimous

Correspondence

a. President/Vice President Communications

AHS Football Team trip to the State House rescheduled to May 26th.

b. Communication from Elected Officials, Boards and Commissions

Councilor Gilday reports that he attended a forum given by Stephen Baddour regarding the state of the economy.

c. Council Communications, Announcements and Committee Reports

None at this time.

Councilor Sherwood motion to adjourn, Councilor McMilleon second.

9:05PM

Respectfully submitted,
Assistant Town Clerk